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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE STEPHEN V. WILSON, JUDGE PRESIDING

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<b>VERNON UNSWORTH,</b>	)	
	)	
	)	
	)	
Plaintiffs,	)	
	)	No. CV 18-8048
VS	)	
	)	
<b>ELON MUSK,</b>	)	
	)	
	)	
Defendant.	)	
_____	)	

Reporter's Transcript of Proceedings  
**JURY TRIAL - DAY FOUR**  
**MORNING SESSION**  
Los Angeles, California  
**FRIDAY, DECEMBER 6, 2019**

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1 FRIDAY, DECEMBER 6, 2019

8:50 A.M.

2 ~ ~ ~

3 JURY TRIAL - DAY FOUR

4 MORNING SESSION ONLY

08:55:09 5 ~ ~ ~

09:01:53 6 **THE COURT:** We're here with the parties and

09:01:55 7 counsel, and we are at the point where we're going to

09:02:03 8 instruct the jury and then begin deliberations. But there

09:02:11 9 are some matters that were brought up toward the end of the

09:02:15 10 trial that weren't fully addressed even though we went late

09:02:23 11 into the evening yesterday, and those involve the motions to

09:02:29 12 strike by the defendant.

09:02:36 13 One motion was the defendant -- the witness

09:02:44 14 Birchall's use of pseudonym, Jack Brickhouse. I think under

09:02:51 15 the circumstances that's inconsequential, and that motion

09:02:55 16 will be denied.

09:02:56 17 The testimony regarding press leaks will be

09:03:12 18 denied because I agree with the plaintiff, that it does allow

09:03:17 19 the jury, if they so conclude, to conclude that this was

09:03:32 20 something of a pattern or practice which relates back to the

09:03:37 21 July 15 tweet. It's not my job to limit evidence based upon

09:03:53 22 weight. If it has sufficient probative value, it can be

09:04:02 23 received.

09:04:03 24 My primary question is with regard to the

09:04:13 25 hiring of the -- testimony regarding the hiring of a private

investigator and the \$10,000 payment, and they're separate issues.

Pretrial I did ask the defendant whether the defendant was going to stipulate to Element 5 of the defamation claim, and their response was they were not. And so the hiring of an investigator was, even though it was down the road, was relevant to show duty of care on Element 5.

On the other hand, the case law says that the post-statement evidence is admissible if there are post -- in this case -- July 15, statements that are defamatory, and the hiring of the investigator after the August 6 demand letter and \$10,000 payment arguably strays somewhat from that doctrine.

So, let me ask the defendant, whoever speaks for the defendant, take the lectern. There are so many lawyers here.

**MR. SPIRO:** Good morning, Your Honor.

**THE COURT:** Yes, good morning.

If the plaintiff clearly has the right to argue the point that defendant could have investigated before making a statement, and forgetting for the moment the hiring of the private investigator, Howard, in the middle of August, if the plaintiff argued that defendant could have hired an investigator before responding to the Unsworth interview of July 13, would you rebut that?

09:07:43 1 **MR. SPIRO:** No, Your Honor, so long as it's kept

09:07:46 2 separate and apart from the other incidents you described.

09:07:49 3 **THE COURT:** I don't understand the last part of

09:07:51 4 your --

09:07:51 5 **MR. SPIRO:** If it was just simply that, then, no,

09:07:54 6 I would not rebut it.

09:07:55 7 **THE COURT:** In other words -- and so, the --

09:08:02 8 Because that was one of the primary reasons

09:08:04 9 why the testimony of the investigator was received --

09:08:22 10 (paused.)

09:08:22 11 **MR. SPIRO:** Your Honor, it's our position --

09:08:25 12 **THE COURT:** Wait a minute. Don't interrupt. When

09:08:27 13 there is a pause, it doesn't give you license to fill up the

09:08:30 14 air space.

09:08:31 15 **MR. SPIRO:** My apologies.

09:08:58 16 **THE COURT:** Now, on the same issue, there is also

09:09:01 17 my processing of the evidence, and of course I don't know how

09:09:04 18 the lawyers process the evidence, that the Howard

09:09:16 19 investigation was somewhat favorable to the defense in the

09:09:26 20 sense that it shed light on the BuzzFeed e-mail of -- e-mail

09:09:49 21 of August 30.

09:09:50 22 In other words, when Musk made the statements

09:09:53 23 that he did make in that e-mail, I thought one of your -- the

09:09:59 24 fact that he had asked these questions of the investigator

09:10:05 25 and that at least at the point of the BuzzFeed, so the



09:10:11 1 defense position would be they believed Howard was a  
09:10:15 2 straight-up investigator and that he was telling them the  
09:10:23 3 kinds of things that Musk thought were certainly relevant to  
09:10:30 4 further investigation by the BuzzFeed reporter. That was how  
09:10:35 5 I was processing some of the information. But if I grant  
09:10:41 6 your motion to strike the hiring of the private investigator,  
09:10:52 7 then that argument is removed.

09:10:58 8 How do you view it in that context? Do you  
09:11:05 9 still want it removed?

09:11:06 10 **MR. SPIRO:** Well, it depends on whether or not the  
09:11:08 11 Court is considering removing -- I guess --

09:11:11 12 **THE COURT:** I'm not removing the BuzzFeed.

09:11:13 13 **MR. SPIRO:** Then I can't be excised from  
09:11:15 14 commenting at all on the fact that he had information at that  
09:11:15 15 point, because you're right, it would clear the gap for the  
09:11:17 16 defense.

09:11:17 17 **THE COURT:** That's the point, that's the point.  
09:11:21 18 All right, we've got that resolved.

09:11:24 19 Then on the issue -- the final issue, the  
09:11:30 20 \$10,000 payment. Before I get further into that, I want to  
09:11:40 21 have my memory refreshed as to what the record shows.

09:11:47 22 I don't have a clear memory of whether during  
09:11:58 23 Birchall's testimony he was asked whether he told Musk about  
09:12:04 24 the \$10,000 payment or whether Musk told him to make the  
09:12:12 25 payment, and I seem to remember that in the defense

09:12:18 1 examination of Musk that the defense asked Musk whether he  
09:12:24 2 knew about the \$10,000 payment, and he denied it. And I  
09:12:32 3 don't recall whether Birchall was asked further about --  
09:12:39 4 about whether he communicated the payment to Musk.

09:12:47 5 Do the parties have a memory of what that  
09:12:51 6 was?

09:12:51 7 **MR. WOOD:** I do, Your Honor.

09:12:53 8 **THE COURT:** You do?

09:12:53 9 **MR. WOOD:** Not a memory, but I have Mr. Musk's  
09:12:56 10 transcript.

09:12:57 11 **THE COURT:** All right, well, just tell me.  
09:12:58 12 Quickly.

09:13:00 13 **MR. WOOD:** He acknowledged that he was aware of  
09:13:00 14 it. He thought it was reasonable to pay the bonus for  
09:13:05 15 receiving verified information, and he knew had not been  
09:13:08 16 paid.

09:13:10 17 **THE COURT:** I see.

09:13:10 18 **MR. SPIRO:** Your Honor --

09:13:11 19 **MR. WOOD:** It's pages 91 and 92 of the transcript.

09:13:16 20 **MR. SPIRO:** -- I don't believe that's the  
09:13:18 21 transcript.

09:13:19 22 **THE COURT:** Well, I mean, there isn't a formal  
09:13:21 23 transcript, but you are getting dailies, aren't you?

09:13:24 24 **MR. SPIRO:** Right, and we're looking at the  
09:13:26 25 transcript. We don't see Mr. Musk saying that he was aware

09:13:29 1 of it. I think what Mr. Musk testified to is, under the  
09:13:33 2 circumstances, he doesn't find it unreasonable if that  
09:13:36 3 happened, but not that he was actually aware of it.

09:13:39 4 **THE COURT:** Do we have --

09:13:40 5 Can we pull up the daily? Do you -- let's  
09:13:45 6 find out.

09:13:48 7 Just one moment. Are we doing that now? Is  
09:13:59 8 that it?

09:14:00 9 **MR. SPIRO:** Yes.

09:14:01 10 **THE COURT:** Is that going to be lengthy?

09:14:02 11 **MR. SPIRO:** I think it's a very short --

09:14:05 12 **THE COURT:** Yeah, okay.

09:14:36 13 **MR. WOOD:** Your Honor, would you --

09:14:38 14 **THE COURT:** Nothing further at this point.

09:15:10 15 **MR. SPIRO:** Your Honor, would you like to see the  
09:15:12 16 testimony or have it read?

09:15:17 17 **THE COURT:** Hand it up.

09:15:21 18 **MR. WOOD:** May I ask what page number, Your Honor?

09:15:28 19 (Discussion off the record.)

09:15:38 20 **THE COURT:** I'm looking at the daily at page 90  
09:15:43 21 at --

09:16:09 22 (Discussion off the record.)

09:16:11 23 **THE COURT:** But what you just gave me relates to  
09:16:13 24 what Howard was paid, \$52,000.

09:16:20 25 I'm interested in the \$10,000 bonus.

09:16:23 1 **MR. SPIRO:** It follows in the next --

09:16:25 2 **THE COURT:** Oh, it does? Okay. Just give me a

09:16:29 3 moment.

09:17:50 4 So, the relevant part seems to be at page 91,  
09:17:54 5 lines 14 through 24.

09:18:03 6 "Question: Were you aware -- well, were you aware  
09:18:09 7 that in August of 2018 that on your behalf Mr. Birchall,  
09:18:14 8 under the name of Jack Brickhouse, told Mr. Howard, the con  
09:18:20 9 man, before he knew that, that he told him in August 2018  
09:18:24 10 that he would pay him a \$10,000 bonus for verified  
09:18:29 11 information of nefarious conduct by Vernon Unsworth. Did you  
09:18:35 12 know he was incentivizing him with that bonus, sir?

09:18:40 13 "Answer: I never caught the specifics of the  
09:18:43 14 conversation, but that doesn't sound unreasonable if it's  
09:18:45 15 verified information.

09:18:48 16 "Question: But if you don't produce the  
09:18:50 17 information under that scenario, you don't get the bonus,  
09:18:54 18 right?

09:18:55 19 "Answer: Correct. Verified information.

09:19:03 20 "Question: And you know that he never got the  
09:19:06 21 bonus because he never produced any confirmed verified  
09:19:09 22 information of nefarious conduct by Vernon Unsworth. True?

09:19:20 23 "Answer: Yes, true."

09:19:21 24 So, that is the relevant part. Okay.

09:19:26 25 **MR. SPIRO:** Yes, Your Honor.

09:19:27 1 **MR. WOOD:** Yes, Your Honor.

09:19:30 2 **THE COURT:** And the argument could be that that is  
09:19:39 3 beyond the scope of the case law which allows circumstantial  
09:19:54 4 evidence of post July 15 tweet, that certainly is a detail;  
09:20:06 5 and furthermore, it has the potential for confusing the jury  
09:20:13 6 in the sense that there is a duty of care requirement under  
09:20:26 7 Element 5 of the defamation.

09:20:37 8 And this evidence has a duty of care aspect  
09:20:51 9 with regard to defendant's -- assuming there is an adequate  
09:21:01 10 connection between Musk and the \$10,000 payment and the duty  
09:21:08 11 of care in dealing with the investigator.

09:21:30 12 I'll briefly hear from each side, once again,  
09:21:35 13 on that motion to strike. It would be the motion to strike  
09:21:39 14 the \$10,000 payment, I would suppose, on two grounds: One,  
09:21:50 15 there is an inadequate connection to Musk's knowledge of the  
09:21:56 16 payment; and second, that even if the inference suggests that  
09:22:04 17 Musk knew about it, it is too tangential by way of post July  
09:22:17 18 15 evidence.

09:22:23 19 Briefly, without giving me your final  
09:22:25 20 argument, how do you see that?

09:22:29 21 First you.

09:22:30 22 **MR. WOOD:** Thank you.

09:22:37 23 Two points: One, I believe that the  
09:22:39 24 testimony that Your Honor just read, that was presented to  
09:22:42 25 the jury, does allow the jury to make a reasonable inference

09:22:47 1 from that testimony that Mr. Musk knew -- while not the  
09:22:52 2 specifics -- he did not deny; he said I just didn't know the  
09:22:56 3 specifics. I think the connection is there.

09:22:58 4 The issue of how to use that -- I don't even  
09:23:01 5 intend to mention in my opening statement -- my closing  
09:23:03 6 statement -- but it's probative of Mr. Musk's state of mind.

09:23:11 7 **THE COURT:** In what regard? In other words, he  
09:23:13 8 said that you'll get a \$10,000 payment if you provide  
09:23:20 9 verified information. And at that point he's being sued. I  
09:23:33 10 mean, the suit hadn't been filed, but he got your letter.  
09:23:37 11 So, how does it reflect upon his state of mind on July 15th?

09:23:43 12 **MR. WOOD:** It demonstrates, as one piece of  
09:23:46 13 evidence that as of August 15th, he still didn't know if it  
09:23:51 14 was true or false because he hired an investigator. That  
09:23:55 15 means he didn't know it on July the 15th.

09:23:58 16 The second part is not actual malice --  
09:24:01 17 that's actual malice -- common law malice. It demonstrates  
09:24:05 18 that type of malice, oppression or fraud in his state of mind  
09:24:08 19 across the time period. If you do that on August 15, you  
09:24:11 20 have the state of mind to do that type of thing on July the  
09:24:13 21 5th.

09:24:13 22 **THE COURT:** But he's already said that he didn't  
09:24:16 23 know whether -- at the time of the July 15 tweet, he didn't  
09:24:23 24 know whether Unsworth was a pedophile or not. He knew  
09:24:31 25 nothing about Unsworth. Even in the tweet it starts out by

09:24:36 1 saying something like: Never met this guy before, and so  
09:24:42 2 forth. So, he can't possibly argue to the jury that he had  
09:24:47 3 some belief at the time that Unsworth was a pedophile because  
09:24:53 4 that's not his -- that's not going to be his argument.

09:24:58 5 So, on Element 5, and that's why I asked the  
09:25:06 6 defendant pretrial whether that was going to be conceded, and  
09:25:12 7 in light of the fact that he didn't concede it, that's why we  
09:25:18 8 move forward.

09:25:19 9 But now if the defense is not going to argue  
09:25:27 10 that Musk could have conducted an investigation on July 15  
09:25:35 11 before making the statement, what is the probative value as  
09:25:44 12 to his state of mind on July 15 when in August 15 he, through  
09:25:52 13 Birchall, hired the investigator.

09:25:55 14 **MR. WOOD:** Because on July the 15th, when he  
09:25:57 15 tweeted, he did know Mr. Unsworth. He had conducted an  
09:26:01 16 investigation. He had seen Mr. Unsworth on the CNN  
09:26:06 17 interview, and then he's testified that up to an hour or so,  
09:26:09 18 he went in and started researching Mr. Unsworth in Chiang  
09:26:13 19 Rai, and he took that body of knowledge that he knew about  
09:26:17 20 Vernon Unsworth, and he tweeted, what we contend, was that  
09:26:20 21 that man, on the interview, from what I've read about him  
09:26:25 22 factually, and he put the factual information in his tweet,  
09:26:28 23 he told the world he was a pedophile. That why it goes to  
09:26:33 24 his state of mind.

09:26:34 25 Thank you.

09:26:34 1 **THE COURT:** Let me hear the response.

09:26:35 2 **MR. SPIRO:** We're not arguing, Your Honor --

09:26:39 3 **THE COURT:** Take the lectern so I can hear you  
09:26:41 4 better.

09:26:41 5 **MR. SPIRO:** Your Honor, we're not arguing that  
09:26:43 6 there was any factual basis whatsoever on July 15th to make  
09:26:46 7 any accusation. So, the -- it's just not an issue from our  
09:26:53 8 perspective, and so it doesn't go -- it's not probative as to  
09:26:56 9 what was in his mind on July 15 because our position is, he  
09:27:00 10 wasn't intending -- he had no facts, and he wasn't intending  
09:27:02 11 to make any accusations.

09:27:09 12 **THE COURT:** And on the \$10,000 payment, your final  
09:27:13 13 thought?

09:27:14 14 **MR. SPIRO:** Again, I don't think there is --  
09:27:15 15 We don't believe there is sufficient  
09:27:17 16 connection to Mr. Musk based on that testimony. What he's  
09:27:21 17 responding to is, they never verified the information, which  
09:27:25 18 Mr. Musk said several times --

09:27:28 19 **THE COURT:** Let's say there was a sufficient  
09:27:29 20 connection, what would your argument be?

09:27:34 21 **MR. SPIRO:** That the manner of compensation in an  
09:27:38 22 investigation doesn't have any bearing -- on a later  
09:27:41 23 investigation, doesn't have any bearing on --

09:27:45 24 **THE COURT:** Something of a detail.

09:27:46 25 **MR. SPIRO:** Correct, Your Honor, it lacks



09:27:48 1 probative value, and we would move under 403 --

09:27:51 2 **THE COURT:** I'll give this a few minutes' thought,  
09:27:54 3 and then I'll come out and give you my final ruling.

09:27:57 4 **MR. SPIRO:** Thank you.

09:28:02 5 (Recess taken.)

09:38:21 6 **THE COURT:** Okay, here are my rulings on the  
09:38:27 7 matters we discussed.

09:38:29 8 I am going to grant the defendant's motion  
09:38:42 9 insofar as the investigation is concerned to strike the  
09:38:48 10 testimony regarding the level of due diligence that Birchall  
09:39:01 11 used in hiring Howard. In my view, that goes beyond the  
09:39:05 12 scope of the teaching of the case of her ^ Herbert versus  
09:39:12 13 Landau.

09:39:12 14 Similarly, I am striking all the testimony  
09:39:17 15 about the \$10,000 bonus, because in my view, that goes beyond  
09:39:27 16 ^ Herbert versus Landau. The other matters we discussed can  
09:39:32 17 be used.

09:39:35 18 Bring the jury in, Paul.

09:39:37 19 COURT CLERK: Yes, Your Honor.

09:41:41 20 (Following held in the presence of the jury.)

09:41:42 21 **THE COURT:** Good morning, members of the jury.  
09:41:46 22 Thank you once again for being so punctual.

09:41:49 23 My apologies. The Court wasn't as punctual,  
09:41:52 24 but we weren't dilly-dallying, we were taking up some matters  
09:41:58 25 that didn't concern you, but we resolved those.

09:42:01 1 So, before I give you the instructions, I  
09:42:04 2 want to make two rulings that you have to abide by. First, I  
09:42:14 3 am striking from the record all the testimony of Mr. Birchall  
09:42:21 4 regarding the degree of due diligence he used in hiring the  
09:42:27 5 investigator, Howard. And second, I am striking from the  
09:42:36 6 record any testimony about the \$10,000 bonus payment that you  
09:42:51 7 heard about.

09:42:52 8 When I strike testimony from the record, you  
09:42:57 9 have to abide by that. You cannot consider that testimony.  
09:43:02 10 It can't be argued. It is as though it didn't occur. And  
09:43:08 11 having --

09:43:09 12 And you shouldn't speculate regarding the  
09:43:12 13 reasons why I struck the testimony. That's for me to decide.  
09:43:18 14 Okay?

09:43:21 15 And as I told you, it should be clear  
09:43:25 16 throughout, the decision is solely yours, not mine, regarding  
09:43:32 17 the evidence. Okay.

09:43:33 18 (JURY CHARGE)

09:43:33 19 Members of the jury, now that you have heard  
09:43:38 20 all of the evidence, you will shortly hear the arguments of  
09:43:41 21 the lawyers, it is my duty to instruct you as to the law of  
09:43:45 22 the case. A copy of these instructions will be sent with you  
09:43:48 23 to the jury room when you deliberate.

09:43:52 24 You must not infer from these instructions or  
09:43:55 25 from anything I may say -- I have said or done as indicating

09:43:59 1 that I have an opinion regarding the evidence of what your  
09:44:03 2 verdict should be. It is your duty to find the facts from  
09:44:08 3 all the evidence in the case. To those facts, you will apply  
09:44:11 4 the law as I give it to you. You must follow the law as I  
09:44:15 5 give it to you whether you agree with it or not, and you must  
09:44:19 6 not be influenced by any personal likes, dislikes, opinions,  
09:44:24 7 prejudices or sympathy. That means you must decide the case  
09:44:27 8 solely on the evidence before you. You will recall that you  
09:44:29 9 took an oath to do so.

09:44:31 10 The plaintiff must persuade you by the  
09:44:35 11 evidence presented in court that he is required to prove --  
09:44:42 12 that what he is required to prove is more likely to be true  
09:44:45 13 than not true. This is referred to as the burden of proof.

09:44:52 14 After weighing all of the evidence, if you  
09:44:55 15 cannot decide that something is more likely to be true than  
09:44:57 16 not true, you must conclude that the plaintiff did not prove  
09:45:01 17 it. You should consider all the evidence no matter which  
09:45:05 18 party produced the evidence.

09:45:07 19 In criminal trials, the prosecution must  
09:45:09 20 prove the defendant is guilty beyond a reasonable doubt. But  
09:45:13 21 in civil trials, such as this one, the plaintiff is required  
09:45:17 22 to prove something is more likely to be true than not true.

09:45:22 23 The evidence you are to consider in deciding  
09:45:25 24 what the facts are consists of the sworn testimony of any  
09:45:29 25 witness, the exhibits which are received into evidence, and

any facts to which the lawyers have agreed.

You may have heard the term "stipulation" there in the case. That essentially means that the lawyers have agreed to that fact, and no further evidence regarding that fact need be produced.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you.

One: Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, what they shortly will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

Questions and objections of lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the Rules of Evidence. You should not be influenced by the objection or by the Court's ruling on it.

Testimony that has been excluded or stricken or that you have been instructed to disregard is not evidence and must not be considered. In addition, sometimes testimony

09:47:00 1 and exhibits are received only for a limited purpose. If I  
09:47:04 2 have given such a limiting instruction, you must follow it.

09:47:08 3 Anything you may have seen or heard when the  
09:47:12 4 Court was not in session is not evidence. You are to decide  
09:47:18 5 the case solely on the evidence received at the trial. Some  
09:47:21 6 evidence may be admitted for a limited purpose. If I gave  
09:47:27 7 that instruction, you must follow it.

09:47:33 8 Evidence may be direct or circumstantial.  
09:47:36 9 Direct evidence is direct proof of a fact such as testimony  
09:47:40 10 by a witness about what that witness personally saw or heard  
09:47:45 11 or did. Circumstantial evidence is proof of one or more  
09:47:49 12 facts from which you could find another fact. You should  
09:47:52 13 consider both kinds of evidence. The law makes no  
09:47:54 14 distinction between the weight to be given to either direct  
09:47:58 15 or circumstantial evidence. It is for you to decide how much  
09:48:02 16 weight to give to any evidence.

09:48:08 17 In deciding the facts in this case, you may  
09:48:18 18 have to decide which testimony to believe and which testimony  
09:48:21 19 not to believe. You may believe everything a witness says or  
09:48:26 20 part of it or none of it.

09:48:27 21 Proof of a fact does not necessarily depend  
09:48:30 22 on the number of witnesses who testify about it. In  
09:48:34 23 considering the testimony of any witness, you may take into  
09:48:38 24 account: One, the opportunity and ability of the witnesses  
09:48:42 25 to see or hear or know the things testified to; two, the

09:48:47 1 witness' memory; three, the witness's manner while  
09:48:51 2 testifying; four, the witness's interest in the outcome of  
09:48:54 3 the case, and any bias or prejudice; five, whether other  
09:48:58 4 evidence contradicted the witness's testimony, the  
09:49:01 5 reasonableness of the witness's testimony in light of all the  
09:49:05 6 evidence and any other factors that bear on believability.

09:49:08 7 The weight of the evidence as to a fact does  
09:49:11 8 not necessarily depend on the number of witnesses who testify  
09:49:14 9 about it. Whether or not you took notes, you should rely on  
09:49:19 10 your own memory of the evidence. Notes are only to assist  
09:49:23 11 your memory. You should not be overly influenced by your  
09:49:27 12 notes or those of your fellow jurors's.

09:49:31 13 You've heard testimony from an expert who  
09:49:34 14 testified to opinions and the reasons for his opinion. The  
09:49:38 15 opinion testimony is allowed because of the education or  
09:49:42 16 experience of this witness. Such testimony should be judged  
09:49:47 17 like any other testimony. You may accept it or reject it and  
09:49:50 18 give it as much weight as you think it deserves, considering  
09:49:52 19 the witness's education and experience, the reasons given for  
09:49:56 20 the opinion and all the other evidence in the case.

09:49:58 21 Mr. Unsworth claims that Mr. Musk harmed him  
09:50:03 22 by making one or more of the statements: "I never saw this  
09:50:08 23 British expat guy who lives in Thailand (sus) at any point  
09:50:15 24 when we were in the caves.

09:50:16 25 Two -- second statement: "Sorry pedo guy.

09:50:19 1 You really did ask for it."

09:50:21 2 Three: "Bet you a signed dollar it's true."

09:50:25 3 To establish liability for this claim,  
09:50:28 4 Mr. Unsworth must prove all of the following:

09:50:30 5 One: That Mr. Musk made one or more of the  
09:50:35 6 statements to persons other than Mr. Unsworth.

09:50:38 7 Two: That these people reasonably understood  
09:50:41 8 that the statements were about Mr. Unsworth.

09:50:44 9 Three: That these people reasonably  
09:50:46 10 understood the statements to mean that Mr. Unsworth was a  
09:50:52 11 pedophile; that is, Mr. Unsworth had engaged in a sexual act  
09:50:56 12 with a child.

09:50:57 13 Four: That the statements were false.

09:50:59 14 And five: That Mr. Musk failed to use  
09:51:03 15 reasonable care to determine the truth or falsity of the  
09:51:06 16 statements.

09:51:07 17 For Mr. Unsworth to recover, Mr. Musk's  
09:51:11 18 statements must have been statements of fact, not opinion.

09:51:14 19 "A statement of fact" is one that can be  
09:51:17 20 proved to be true or false. In some circumstances Mr.  
09:51:23 21 Unsworth may recover if a statement phrased as an opinion  
09:51:27 22 implies that a false statement of fact is true.

09:51:29 23 In deciding this issue, you should consider  
09:51:31 24 whether the average reader would conclude from the language  
09:51:34 25 of the statement and its context that Mr. Musk was implying

09:51:39 1 that a false statement of fact is true.

09:51:42 2 The words "statement" in these instructions  
09:51:46 3 refers to any form of communication or representation,  
09:51:50 4 including spoken or written words or pictures.

09:51:54 5 It is the duty of the Court to instruct you  
09:51:57 6 about the measure of damages. By instructing you on damages,  
09:52:02 7 the Court does not mean to suggest for which party your  
09:52:05 8 verdict should be rendered.

09:52:07 9 If you find for the plaintiff, you must  
09:52:09 10 determine the plaintiff's damages. The plaintiff has the  
09:52:13 11 burden of proving actual damages by a preponderance of the  
09:52:15 12 evidence. The plaintiff has the burden of proving assumed  
09:52:19 13 and punitive damages by clear and convincing evidence.

09:52:23 14 "Damages" means the amount of money that will  
09:52:26 15 reasonably and fairly compensate the plaintiff for any injury  
09:52:32 16 you find was caused by the defendant.

09:52:35 17 It is for you to determine what damages, if  
09:52:38 18 any, have been proved. Your award must be based upon  
09:52:42 19 evidence and not upon speculation, guesswork and conjecture.

09:53:27 20 When a party has the burden of proving any  
09:53:31 21 claim or defense by a clear and convincing evidence, in this  
09:53:34 22 case, it is the plaintiff's burden, it means that the party  
09:53:37 23 must present evidence that leaves you with a firm belief or  
09:53:41 24 conviction that it is highly probable and that the factual  
09:53:45 25 contentions of the claim are true.



09:53:48 1 This is a higher standard of proof than proof  
09:53:51 2 by a preponderance of the evidence, but it does not require  
09:53:55 3 proof beyond a reasonable doubt. If Mr. Unsworth has proved  
09:54:06 4 all of the above, he's entitled to recover his actual damages  
09:54:09 5 if he proves that Mr. Musk's wrongful conduct was a  
09:54:14 6 substantial factor in causing him any of the following: Harm  
09:54:19 7 to his reputation or shame, mortification or hurt feelings.

09:54:24 8 Even if Mr. Unsworth has not proved any  
09:54:29 9 actual damages or harm to reputation or shame, mortification  
09:54:35 10 or hurt feelings but proves by a clear and convincing  
09:54:38 11 evidence that Mr. Musk knew the statements were false and --  
09:54:47 12 or that he had serious doubts about the truth of the  
09:54:50 13 statements, then the law assumes Mr. Unsworth's reputation  
09:54:54 14 has been harmed and that he has suffered shame, mortification  
09:54:58 15 or hurt feelings. Without presenting any evidence of damage,  
09:55:01 16 Mr. Unsworth is entitled to receive compensation for his  
09:55:04 17 assumed harm in whatever sum you believe is reasonable. To  
09:55:10 18 award assumed damages, you must award at least a nominal sum  
09:55:15 19 such as one dollar.

09:55:16 20 Assumed damages should be reduced by any  
09:55:19 21 amount you have already awarded as actual damages.

09:55:25 22 Mr. Unsworth may also recover damages to  
09:55:29 23 punish Mr. Musk if Mr. Unsworth proves by clear and  
09:55:34 24 convincing evidence that Mr. Musk either knew the statements  
09:55:37 25 were false or had serious doubts about the truth of the

statements, and that he acted with malice, oppression or fraud.

If you decide that Mr. Musk's conduct caused Mr. Unsworth harm, you must decide whether that conduct justifies an award of punitive damages. The purpose of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and discourage similar conduct in the future. You may award punitive damages only if Mr. Unsworth proves by clear and convincing evidence that Mr. Musk knew the statements were false or that he had serious doubts about the truth of the statements, and that Mr. Musk engaged in that conduct with malice, oppression or fraud.

"Malice" means that Mr. Musk acted with the intent to cause injury or that Mr. Musk's conduct was despicable and was done with the willful and knowing disregard of the rights or safety of another.

A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that Mr. Musk's conduct was despicable and subjected ^ Mr. Musk to cruel and unjust hardship in knowing -- in knowing disregard of his rights.

"Despicable conduct" is conduct that is so vile, base or contemptible that it should be looked down on

09:57:10 1 and despised by reasonable people.

09:57:12 2 "Fraud" means that Mr. Musk intentionally  
09:57:13 3 misrepresented or concealed a material fact and did so  
09:57:17 4 intending to harm Mr. Unsworth.

09:57:19 5 There is no fixed amount for determining the  
09:57:22 6 amount of punitive damages, and you are not to award -- and  
09:57:25 7 you are not required to award any punitive damages.

09:57:29 8 If you decide to award punitive damages, you  
09:57:32 9 should consider all of the following factors in determining  
09:57:36 10 the amount: How reprehensible was Mr. Musk's conduct? In  
09:57:42 11 deciding how reprehensible Mr. Musk's conduct was, you may  
09:57:47 12 consider, among other factors, whether the conduct caused  
09:57:50 13 physical harm, whether Mr. Musk disregarded the health or  
09:57:54 14 safety of others, whether Mr. Unsworth was financially weak  
09:57:57 15 or vulnerable and Mr. Musk knew Mr. Unsworth was financially  
09:58:03 16 weak or vulnerable and took advantage of him, whether Mr.  
09:58:06 17 Musk's conduct involved the pattern or practice, and whether  
09:58:09 18 Mr. Musk's conduct acted with trickery or deceit.

09:58:14 19 You also have to determine whether there is a  
09:58:16 20 reasonable relationship between the amount of punitive  
09:58:19 21 damages and Mr. Unsworth's harm or between the amount of  
09:58:23 22 punitive damages and potential harm to Mr. Unsworth that Mr.  
09:58:28 23 Musk was likely -- Mr. Musk was -- Mr. Musk knew it was  
09:58:34 24 likely to occur because of his conduct.

09:58:36 25 In view of Mr. Musk's financial condition,

09:58:42 1 you should also consider that what amount is necessary to  
09:58:45 2 punish him or discourage future wrongful conduct. You may  
09:58:50 3 not increase the punitive award above an amount that is  
09:58:55 4 otherwise appropriate merely because Mr. Musk has substantial  
09:58:59 5 financial resources.

09:59:00 6 Punitive damages may not be used to punish  
09:59:03 7 Mr. Musk for the impact of his alleged misconduct on persons  
09:59:09 8 other than Mr. Unsworth.

09:59:12 9 You will get a copy of these instructions to  
09:59:17 10 consult in the jury room.

09:59:38 11 You will shortly hear the -- momentarily --  
09:59:42 12 the arguments of the lawyers. You will note that the  
09:59:46 13 plaintiff goes first, because they have the burden of proof.  
09:59:50 14 The defendant then gets a chance to argue, and the plaintiff  
09:59:53 15 has a chance to argue again, because they have the burden of  
10:00:00 16 proof.

10:00:00 17 And, again, this is just a guide to you. You  
10:00:09 18 have to follow the instructions but -- in assessing the  
10:00:13 19 evidence in the case. In looking at the evidence, your first  
10:00:18 20 task is to only look at the evidence regarding the July 15th  
10:00:24 21 tweet, up to that time. That is the rescue, the CNN  
10:00:33 22 interview and the July 15 tweet. That should be your first  
10:00:37 23 examination.

10:00:39 24 In the context of the evidence, your first  
10:00:43 25 task is to decide if plaintiff has proven his case of

10:00:47 1 defamation. If you find a reasonable person in the context  
10:00:57 2 would conclude that defendant called plaintiff a pedophile,  
10:01:01 3 that is someone who has sexual encounter with a child, then  
10:01:05 4 you may continue to analyze if the defendant acted  
10:01:12 5 maliciously and follow the instructions I gave you regarding  
10:01:16 6 damages. That's sort of a construct as to how you should  
10:01:22 7 approach the evidence.

10:01:23 8 Okay, now, we'll hear the arguments.

10:01:27 9 Okay, first the plaintiff.

10:01:37 10 **MR. WOOD:** May I proceed, Your Honor, for the  
10:01:39 11 plaintiff.

10:01:40 12 **THE COURT:** Yes.

10:01:43 13 (CLOSING ARGUMENTS BY PLAINTIFF)

10:01:50 14 **MR. WOOD:** Good morning, ladies and gentlemen.

10:01:52 15 **THE COURT:** No one can hear you beyond the  
10:01:52 16 microphone.

10:01:56 17 **MR. WOOD:** Good morning. It's the first time I've  
10:01:57 18 actually, under the rules of our procedure, been allowed to  
10:02:02 19 speak with you. So, it's nice to be able to finally do that.

10:02:06 20 You've been here every day, on time, as late  
10:02:13 21 as the Judge asked you to be here, and we all have been here  
10:02:18 22 every day with you.

10:02:24 23 The Judge -- the Court has used the phrase  
10:02:29 24 that you will hear the arguments, and that's what many, many,  
10:02:34 25 if not most judicial officers and lawyers call this the

10:02:41 1 closing arguments. I'm going to give you heads up. I'm not  
10:02:48 2 here to argue with you. I call these closing remarks.

10:02:56 3 In a couple of hours, maybe shorter, you will  
10:03:00 4 take the evidence: The documents, the testimony. You will  
10:03:05 5 take the evidence into the jury room, and you will be called  
10:03:11 6 upon to review that evidence, and you'll be called upon to  
10:03:15 7 answer certain questions from that evidence and just that  
10:03:23 8 evidence, because that's what you swore to do.

10:03:31 9 And the answers to the questions you resolve  
10:03:33 10 in the jury room are supposed to end up when you come back  
10:03:38 11 into this courtroom when you've answered those questions, you  
10:03:44 12 are going to deliver your verdict. And your obligation and  
10:03:53 13 promise is to deliver a verdict that speaks the truth.

10:04:08 14 In my closing remarks, this is the portion of  
10:04:12 15 the trial where I, to fulfill my professional  
10:04:16 16 responsibilities to Vernon Unsworth, I have the professional  
10:04:23 17 responsibility to discuss with you what the answers to those  
10:04:29 18 questions should be based on the evidence.

10:04:41 19 And then after you go out to deliberate, my  
10:04:47 20 professional responsibilities, the job that I undertook as a  
10:04:55 21 lawyer and a member of this system of justice, will be done.  
10:05:05 22 I will have fulfilled my obligation to my client, Vernon  
10:05:11 23 Unsworth.

10:05:19 24 So, when you go out to the jury room to  
10:05:21 25 deliberate, whatever weight and burdens I've carried for him

10:05:27 1 for the year and three months that I've represented him, they  
10:05:30 2 get taken off of my shoulders, and I get to turn it over to  
10:05:39 3 you. And after your verdict is returned, and your verdict  
10:05:50 4 speaks the truth, I'll take a couple of hours of rest maybe  
10:05:55 5 even overnight and tomorrow morning, if we get a verdict  
10:05:57 6 today, I'll go back home to Atlanta, Georgia. I'll travel  
10:06:04 7 that 2300 miles, and I'll go back home, and I will resume my  
10:06:08 8 normal life, anyone's definition of normal. I'll go back and  
10:06:16 9 see my kids and one-year-old puppy. I get to go back to my  
10:06:23 10 normal life. And after you have returned your verdict, you  
10:06:26 11 will get to go back and return to your normal life, your job,  
10:06:29 12 your family, your hobbies. Because after your verdict is  
10:06:35 13 done, my responsibility is fulfilled, and your responsibility  
10:06:41 14 is fulfilled.

10:06:47 15 I chose to be here. I chose to be here every  
10:06:57 16 day of this trial when I promised and agreed to Vernon  
10:07:03 17 Unsworth that I would take his case to court to get him a  
10:07:06 18 verdict that spoke the truth.

10:07:12 19 You didn't sign up a year and three months  
10:07:17 20 ago to spend the last four days of your life in this  
10:07:19 21 courtroom. I'm here because of my professional  
10:07:29 22 responsibility. You are here fulfilling your civic duty,  
10:07:35 23 leaving your homes, coming to this courtroom. And for that,  
10:07:41 24 as sincerely as I can tell you on behalf of Mr. Unsworth and  
10:07:51 25 every member of the team that we've worked so hard for him, I

10:07:57 1 thank you. Thank you for your service. Thank you for being  
10:08:03 2 here to fulfill your civic duty.

10:08:08 3 Our roles in our legal system in some ways  
10:08:24 4 are equal, because when I fulfill my role and you fulfill  
10:08:31 5 your role, you sustain for the future the rule of law.

10:08:49 6 Our society is built beginning with one  
10:08:53 7 foundational principle. It is built on one foundation. We  
10:09:05 8 are a society governed by the rule of law. And if we're  
10:09:11 9 going to maintain that system of justice, and I believe we  
10:09:16 10 must, two things have to occur. The law must be obeyed by  
10:09:28 11 all. The law must be obeyed by all. Rich and poor alike.

10:09:39 12 And the second thing we have to have occur in  
10:09:42 13 order to maintain our system of justice that our society is  
10:09:46 14 based on the rule of law, if someone breaks the law, whether  
10:09:57 15 they are rich or of modest means, whether they were 23 -- or  
10:10:04 16 \$20 billion or whether they make 30 some thousand dollars a  
10:10:14 17 year, it is required that when that person breaks the law,  
10:10:20 18 there must be fair and appropriate punishment, rich and poor  
10:10:28 19 alike.

10:10:30 20 We must obey the law; and if we break the  
10:10:36 21 law, we deserve and must be subjected to fair and appropriate  
10:10:41 22 punishment. Those two things have to occur. It has to occur  
10:10:49 23 in order to maintain our governing foundational principle,  
10:10:56 24 that we are a society governed by the rule of law. Justice.

10:11:10 25 I thank you -- I want to thank all those



10:11:16 1 people and Mr. Unsworth team, too. In your presence, I want  
10:11:21 2 you to know I thank them, and I thank Mr. Unsworth, in your  
10:11:26 3 presence, for forwarding me the professional opportunity or  
10:11:37 4 to come into this courtroom for him, to do for him what I've  
10:11:45 5 been doing for 43 years since I took an oath as a lawyer, to  
10:11:52 6 advocate for justice and truth.

10:11:55 7 Thank you for the opportunity, Mr. Unsworth.  
10:11:57 8 It has been the privilege of my career.

10:12:05 9 I not only thank you, I want to tell you that  
10:12:09 10 I respect you. And I really know certain limited information  
10:12:20 11 about you. I have certain limited information about each of  
10:12:25 12 you. You had to provide it to the Court. And based on that  
10:12:32 13 limited information and knowing the role that you play that  
10:12:36 14 is vital to our system of justice, a system I love, and you  
10:12:40 15 do, too, I respect you. Because I believe that you will do  
10:12:53 16 your duty, that you will have the courage, the courage to  
10:13:05 17 come back and tell the truth by your verdict in this  
10:13:11 18 courtroom.

10:13:13 19 You will have the courage to say it and say  
10:13:15 20 it unequivocally and clearly, regardless of who's sitting  
10:13:20 21 here when you come back in. You will confront everybody in  
10:13:24 22 this room, Mr. Unsworth and Mr. Musk. You will have the  
10:13:29 23 courage to look at Mr. Unsworth and Mr. Musk regardless of  
10:13:34 24 where your verdict goes, for Mr. Unsworth, for Mr. Musk, or  
10:13:39 25 for Mr. Unsworth and against Mr. Musk, you will have the

10:13:44 1 courage to come in here and state your verdict, to state the  
10:13:48 2 truth, clearly without apology, without hesitation, without  
10:13:53 3 concern of what will people think that I found this, because  
10:13:58 4 some of your findings will not necessarily be so easy, but I  
10:14:05 5 believe you have the courage to do it, and I respect you for  
10:14:07 6 that courage.

10:14:07 7 Now, I want to try to make your -- I want to  
10:14:24 8 try to make your job of going there and look at all this  
10:14:28 9 evidence. I want to try to make it a little easier for you,  
10:14:33 10 and in the process makes it easier for me when I try to  
10:14:39 11 discuss it in my closing remarks, because I would suggest to  
10:14:49 12 you that there is only one question and one answer to that  
10:14:59 13 question, and once you have come to that answer, to that  
10:15:02 14 first -- the first answer, once you -- once you go in there  
10:15:07 15 and say: Well, I know this. This is what I know. The  
10:15:12 16 other -- the other questions become much easier.

10:15:17 17 And I have been told, and it's courtesy and  
10:15:22 18 it's respect, sometimes we all cross the line and we know  
10:15:28 19 when we say something, shouldn't have said that.

10:15:32 20 I'm going to say something to you that most  
10:15:35 21 lawyers, law professors and even the average person, like  
10:15:42 22 you, represented, they don't say it to someone unless it is  
10:15:51 23 absolutely proven beyond any doubt whatsoever, beyond any  
10:15:58 24 doubt whatsoever, that under the evidence, that under the  
10:16:01 25 evidence you look at someone by your verdict and say: You

1 have not told me the truth. And if you believe that they  
2 have not -- that person has not told you the truth, then I'm  
3 going to have the courage that I have asked you to have, and  
4 I'm going to have it right here in this courtroom, with Mr.  
5 Musk sitting to my right, I'm going to tell you that the  
6 answer that you need to solve all the other questions that  
7 you have to answer is found in one simple truth: Elon Musk  
8 is a liar.

9 How do I know it? I don't know Elon Musk.  
10 I've seen him in his deposition, I've seen him a couple of  
11 times in the courtroom, he walked by me. I've never shaken  
12 Elon Musk's hand. He refused to shake my hand.

13 **THE COURT:** You're getting beyond the evidence.  
14 I've given you some leeway. Argue anything you like, but  
15 base it upon the evidence. If you think that Mr. Musk is  
16 untruthful, relate it to the evidence in the case.

17 Proceed.

18 **MR. WOOD:** Thank you, Your Honor.

19 That's exactly what I wanted to tell you.  
20 Since I don't really know him, the only reason that I can  
21 come to that harsh but honest truth about him is because of  
22 the evidence.

23 He did not take the stand and admit, as  
24 direct evidence, that: I lied. He did not do that. But the  
25 Judge has just informed you, the Court, that that's direct

10:18:04 1 evidence. He didn't do it. Not many people do. Not many  
10:18:07 2 people have the ability to look over and go: I didn't -- I  
10:18:13 3 didn't do it.

10:18:14 4 You know, their state of mind that leaves  
10:18:17 5 them to say: I did it, and I take responsibility for it,  
10:18:22 6 versus: I'm not going to take responsibility for it. I'm  
10:18:26 7 going to dodge around it, I'm going to dance around it, I'm  
10:18:31 8 going to obfuscate around it. They try not to have to admit  
10:18:37 9 the painful truth on the witness stand: I lied.

10:18:40 10 But you get to look at not just that  
10:18:43 11 evidence, direct evidence, which one would never really  
10:18:44 12 expect. No one is really going to come in here and say I  
10:18:47 13 lied. You get to look at the circumstantial evidence, and  
10:18:53 14 the circumstantial evidence, ladies and gentlemen,  
10:19:01 15 undisputedly establishes that truth about Elon Musk, and what  
10:19:09 16 he talked about and what he testified about in relationship  
10:19:13 17 to one, one of many heroes that banded together in July,  
10:19:28 18 June-July of 2018 to save the lives of 12 children and their  
10:19:31 19 coach.

10:19:37 20 If I were to ever find myself -- and I don't  
10:19:40 21 want to be there -- but if I were ever to find myself trapped  
10:19:45 22 under water or in an area where I knew I had to go a mile  
10:19:50 23 under water to try to live, if I ever had that happen, I  
10:20:04 24 would want to look up and see the faces of Vernon Unsworth  
10:20:08 25 and Rick Stanton, because I know that with those faces, I've

10:20:15 1 got a real chance to live and survive, and if I'm in that  
10:20:23 2 situation, those are the faces that I want to see, and with  
10:20:29 3 all due respect, I don't want to look up and see the face of  
10:20:32 4 Elon Musk, because when I see that, if that's who's going to  
10:20:38 5 save me, I have very little, if any, chance at all to live  
10:20:41 6 and survive.

10:20:43 7 What did Vernon Unsworth do? We talked about  
10:20:49 8 in this trial -- I heard the expression: Man versus man,  
10:20:56 9 insult very insult.

10:20:58 10 Let's talk about Vernon Unsworth for just a  
10:21:01 11 moment. And you probably, I would suggest, learned more  
10:21:05 12 about Vernon Unsworth from Rick Stanton than you even did  
10:21:12 13 from the compelling and truthful and sometimes gut-wrenching  
10:21:14 14 testimony of Vernon Unsworth. You probably learned more  
10:21:18 15 about Vernon Unsworth from Rick Stanton than you did from  
10:21:22 16 Vernon Unsworth.

10:21:23 17 Because it was Rick Stanton that told you,  
10:21:27 18 and others agree, that there was a decision made to bring in  
10:21:30 19 the world's most expert -- not cave divers -- cave rescue  
10:21:40 20 divers. Bring in the type of person, man or woman that has  
10:21:48 21 that unique quality in there makeup, in their genes, that  
10:21:56 22 they will walk into a dangerous situation without hesitation,  
10:21:59 23 putting their own lives at risk to save the life of someone  
10:22:09 24 they don't even know. That's who Rick Stanton is.

10:22:12 25 And what did Rick Stanton tell you about

10:22:16 1 Vernon Unsworth? That Rick Stanton could not have done his  
10:22:20 2 expert job that he has the courage to do and the training to  
10:22:23 3 do and the experience to do, he could not have done it  
10:22:29 4 without Vernon Unsworth, because Vernon knew that cave.  
10:22:34 5 Vernon knew the details of that cave, and he knew where the  
10:22:37 6 routes would leave and the obstacles that would have to be  
10:22:41 7 overcome, and he, because of that knowledge, did what for Mr.  
10:22:46 8 Stanton and his fellow rescue divers, cave rescue divers.

10:22:49 9 The first thing they had to do was search.  
10:22:54 10 They had to find these boys. These boys, by the time Rick  
10:23:00 11 Stanton arrived, had been lost and trapped without food or  
10:23:05 12 water for almost ten days. It wouldn't have mattered saying,  
10:23:21 13 all right, let's send out all the people that are willing to  
10:23:24 14 help, spread out over this hillside and try to find them.

10:23:27 15 No, you can't go through the hillside when  
10:23:30 16 you're in a narrow, winding underground cave. You've got to  
10:23:34 17 go out with specific searches if you're going to find them.  
10:23:38 18 And if you've got to go under water for nearly an hour and a  
10:23:43 19 half, in water so dark that you can't, as Rick Stanton told  
10:23:47 20 you, you can't see further than two or three inches ahead of  
10:23:52 21 you, and you're only able to sustain your life while you're  
10:23:57 22 there by virtue of the oxygen that you take with you. You've  
10:23:59 23 got to have enough rope, because you're pulling in the dark,  
10:24:02 24 you've got to have enough rope to get there to the area that  
10:24:06 25 you want to search; and if the kids aren't there, you got to

1 have enough rope and oxygen to get there and enough oxygen to  
2 get back so you can search in another place.

3 The person that was responsible for telling  
4 these expert, brave cave rescue divers where to search and  
5 how much rope they would need to get that that area to see if  
6 they're there and get back, enough oxygen to get there and  
7 get back, the person that told those divers what to take and  
8 where to go was Vernon Unsworth.

9 And then a time came where after the second  
10 search they didn't find them, and they huddled back together  
11 with Vernon there with them and said: Where do we go next?  
12 Where do we look next, Mr. Unsworth? He said go here, try  
13 here. If they weren't there and weren't there, try here.

14 Okay, we'll go. How much rope do we need to  
15 get there and back? How much oxygen do we need to get there  
16 and back? And he told them. And they went, and they found  
17 those boys.

18 On July -- the early part of July they found  
19 those boys and their coach. And having found them, thanks to  
20 Vernon, they had enough oxygen and the rope was in place to  
21 get back and tell everybody: We have found them.

22 Now the question becomes: How in the world,  
23 short of a miracle from God, if not a miracle from God, which  
24 is what I believe this was, how do we get him out here? How  
25 do we get them back outside of that cave.

1                   At that point in time when the inquiry  
2 shifted to how do we get them out, Vernon's role was not as  
3 significant. He's done some diving, but he's not a cave  
4 diver, he certainly never claimed to be a cave rescue diver.  
5 But after he had fulfilled his most vital and significant  
6 role and really didn't need to be there any longer. Having  
7 been there for times, as he told you, for three days, 24/7.  
8 He could have gone home. He could have gone if he had a  
9 business meeting in Shanghai, he could have said: I've got  
10 to go. I got a business meeting. He could have gone home  
11 and would still be an integral part of the rescue team that  
12 saved these kids's lives.

13                   Did he go home? The evidence gives you the  
14 answer: No, he did not. He stayed right there to do  
15 whatever anyone would ask of him to help those divers as they  
16 brought these kids out to the very end.

17                   He was there working the skids which were  
18 used one to another to another to make the final exit from  
19 that cave by these boys. They were not walking out of this  
20 cave, they came out in a skid, and he was one of those people  
21 that carried a skid. He didn't leave, because his -- his  
22 desire to be there and to help these kids, his desire to do  
23 that was genuine. The foremost concern in this gentleman's  
24 mind was one thing: I'm going to save those young boys and  
25 their coach. So, he stayed until they were saved.



1                   Somewhere in the last two or three days,  
2                   whether it was the 5th or the 6th of July, I know it was  
3                   after the 4th because Mr. Musk accepted an apology -- or a  
4                   request, as he perceived it, by some Twitter person: *Is*  
5                   *anything you can do to help @elonmusk?* He has over 22  
6                   million followers -- at the time. He got involved, and they  
7                   talked for one about how could we help.

8                   I don't accept that he was on Twitter talking  
9                   about this. The evidence has tweet after tweet after tweet  
10                  after tweet. It has a video of the pool. You remember the  
11                  swimming pool in a high school in Los Angeles where they put  
12                  a small man, not a child, into that tube that they had made,  
13                  and they put two divers, and they brought that person down  
14                  the length of the pool where the water was clear, the  
15                  obstacles were planned, they were not unknown, and they were  
16                  not dangerous. They didn't test it in the dark and mirky  
17                  waters of Tham Luang Cave. They tested in the clear water of  
18                  a swimming pool, with specifically planned obstacles, lines,  
19                  to try to go through it like an obstacle course. They didn't  
20                  test it in the unknown, the jagged rocks, the pinched areas  
21                  where you couldn't go straight, you have to go under to get  
22                  to the next side. They didn't test it there. That remains  
23                  unknown.

24                  But I noted on the video that it took two  
25                  cave -- or divers in the video --

1                   The individuals that did that were not cave  
2 rescue divers, but it took two of them, it took two of them  
3 to get that tube down the pool.

4                   These young boys were brought out four at a  
5 time, one after the other, four on July the 8th, four on July  
6 the 9th, and final five on July the 10th. And they were  
7 brought out with one diver carrying one child. One diver had  
8 to put his life at risk to carry that child, not two. The  
9 tube would have put two divers' lives at risk per child.

10                  You don't go into a rescue to increase your  
11 risk that the rescuers may not make it themselves, you try to  
12 plan it so you minimize as much as you humanly can to risk  
13 that those divers potentially face when they go do it.

14                  I am not going to hesitate, having once told  
15 you that I believe, under the evidence, that Elon Musk is a  
16 liar. I'm also not going to hesitate to tell you that while  
17 there may have been a tangential concern on his part for  
18 those children, I believe that he saw the opportunity from  
19 all the publicity, starting in July -- June the 24th -- 23rd,  
20 when they realized they were missing, and then immediately  
21 the next day called Vernon Unsworth for help on June the  
22 24th. I believe that Elon Musk saw an opportunity to  
23 capitalize on the dilemma and the worldwide attention being  
24 given to the Thai cave rescue, the 12 lost boys.

25                  I do not question the motives, I don't

1 question the sincerity of any member of SpaceX or Tesla or  
2 the Boring company, whoever he instructed to do the task of  
3 building a tube, I believe that those individuals genuinely  
4 had in their hearts and minds that they were working against  
5 time to try to see if they could assist in the rescue. It's  
6 not their motives I question, it's the motives of Elon Musk.

7 And that's harsh. You heard Mr. Spiro say:  
8 Mr. Unsworth, are you saying that Mr. Musk is such a  
9 coldhearted person that he didn't really care if those kids  
10 came out alive or not when he built this tube and offered to  
11 use it to send them in? Vernon Unsworth said: That's not  
12 what I said on CNN. And he didn't. He did not attack in any  
13 way Elon Musk. He attacked his tube.

14 But I bet you if I had the private  
15 conversation with Mr. Unsworth and said: Do you think  
16 Mr. Musk was doing this to really save those kids, or do you  
17 think he's doing it to get a lot of publicity for himself?  
18 Publicity drives attention, attention drives investors. I  
19 think Vernon Unsworth --

20 **MR. SPIRO:** Objection. Your Honor.

21 **THE COURT:** Objection sustained.

22 Your personal opinions are not appropriate to  
23 your argument. Anything you want to argue based upon the  
24 evidence is permissible.

25 **MR. WOOD:** I believe a reasonable, average person

1 would answer that question: It was about publicity. And  
2 here is why the reasonable member of the community would  
3 reach that conclusion under the evidence, because after he  
4 showed up in his jet with the tube -- and candidly, I'd like  
5 to refer to it as the shiny object, but I'm going to say the  
6 tube or the submarine, the mini sub. After he showed up for  
7 it, and then he met with the --

8 **THE COURT:** Just one moment. I want to not  
9 interrupt unnecessarily but clarify something.

10 You use the term "reasonable person." That  
11 term was part of the instructions. The "reasonable person"  
12 is whether a reasonable reader would construe what Mr. Musk  
13 said in the July 15 tweet as being an accusation of  
14 pedophile. "Reasonable person" now is an argument which you  
15 can consider based upon whether Mr. Musk was truthful or not.  
16 I think it's important that you understand that because of  
17 the term "reasonable person."

18 Go ahead.

19 **MR. WOOD:** Thank you, Your Honor.

20 After meeting with the prime minister of  
21 Thailand, and a reasonable person knows that the Prime  
22 Minister, or can conclude that the Prime Minister of Thailand  
23 is going to come out and meet Mr. Musk and afterwards thank  
24 him, and even in writing, for his efforts because Elon Musk  
25 is one of the most influential people in the world.

1                   After the Thai Prime Minister came out upon  
2                   his arrival and showed him the respect that he felt  
3                   appropriate to one of the most influential people in the  
4                   world, Mr. Musk went there to the cave, went into the cave to  
5                   a certain point, not to a point where he had to go under  
6                   water, because that required you to swim under water for  
7                   almost a mile to get to where the boys were, he went into the  
8                   cave, and at the time he went into the cave after he brought  
9                   the tube there, somehow that had been designed, created,  
10                  built, but I submit not safety tested, he stopped at the  
11                  water's edge, and then he left. He left. And he went back  
12                  after a long day of travel and many hours spent talking back  
13                  and forth with Rick Stanton, who he has acknowledged is -- at  
14                  least as he saw it -- was the go-to guy, the leader of the  
15                  team. That's not really what Rick was. He was just the  
16                  go-to guy of the leader of the cave rescuers, the rescue  
17                  divers.

18                         But I know, I know for a fact, and I do not  
19                         hesitate and I would not say otherwise to you that a  
20                         reasonable person can assume that Mr. Musk is an extremely,  
21                         extremely busy man who has aspirations to try to save the  
22                         world or society or civilization, and that takes a lot of  
23                         time. And I know he worked hard hours. So, he was tired  
24                         when he got there and left the cave, and went to get rest, as  
25                         he should have.

1                   There were five people still in that cave  
2                   when he went into it that night. Four boys and the coach.  
3                   He woke up the next morning, and the evidence shows that he  
4                   wrote Sam teller, and the first thing he said was: *I woke up*  
5                   *in Shanghai this morning, and my girlfriend had texted me*  
6                   *that the press had gone negative, that the governor of the*  
7                   *province has said the tube is not practical.*

8                   Now, what do we know? We know when he first  
9                   asked, that we have documented under the evidence, what is  
10                  missing, what is missing from that e-mail? It should have  
11                  been the first question. *Have they gotten the other four*  
12                  *boys and the coach out to safety yet?* But it's not there.  
13                  It is up to you, the jury, to decide on what Mr. Musk's  
14                  motives truly were, under the evidence.

15                  And then Vernon Unsworth, and -- this is not  
16                  what my law school teacher told me to do in terms of trying a  
17                  case. He wanted me to have a notebook and everything  
18                  organized. So, bear with me if I kind of shuffle my papers a  
19                  bit.

20                  The boys were, in fact, I believe either  
21                  close to or shortly before Mr. Musk woke up and Shanghai, the  
22                  other four boys and the coach, through the preparation of  
23                  Vernon Unsworth and the skill and execution and courage of  
24                  Rick Stanton and the other two expert cave rescue divers,  
25                  they brought the last five home. They brought them out

10:40:35 1 safety. Mission accomplished. Miracle performed.

10:40:40 2 And then within a day or two, after he had  
10:40:45 3 focused his entire life practically for almost two weeks, a  
10:40:50 4 CNN reporter asked him for an interview. Not on Twitter.  
10:41:00 5 Never been on Twitter. And the CNN reporter started that  
10:41:08 6 interview by his or her choice by asking him one question:  
10:41:12 7 *What do you think about Mr. Musk's tube?* And he gave a  
10:41:19 8 figurative response at first, what's called an idiom: *I*  
10:41:26 9 *think he can stick it where it hurts.*

10:41:28 10 Mr. Musk has admitted that he knew that was  
10:41:31 11 an idiomatic phrase that was the equivalent of what? Pardon  
10:41:36 12 my language, he was calling bullshit on the tube. And then  
10:41:43 13 he went into that interview -- not only did he --

10:41:45 14 Listen, ladies and gentlemen of the jury, I  
10:41:50 15 believe that a reasonable person might have used a more harsh  
10:41:54 16 phrase in terms of how they would evaluated his tube, a lot  
10:41:59 17 harsher than saying *He can stick it where it hurts.* There  
10:42:03 18 are more harsh phrases that I believe a reasonable person  
10:42:05 19 could have justified Vernon Unsworth saying, when he came out  
10:42:07 20 of the 14 days, and somebody said: *What do you think of this*  
10:42:10 21 *tube?* But then he told -- he told the answer: *It's too*  
10:42:15 22 *long. It's too rigid. It was just a publicity stunt.*

10:42:23 23 Did he say anything inappropriate when he  
10:42:26 24 called it a publicity stunt? He did not. And we don't have  
10:42:30 25 to go any further than the evidence, even though there is lot

1 of evidence about the numbers of people in the media that  
2 we're talking about it as a public relations stunt before Mr.  
3 Unsworth's interview on CNN, we don't have take the time --

4 **MR. SPIRO:** Objection. It's not in the evidence.

5 **THE COURT:** Objection is sustained. It's beyond  
6 the evidence.

7 **MR. WOOD:** Well, we don't -- we don't need that  
8 evidence, because we have all the evidence we need, that you  
9 need, when Elon Musk testified under oath, himself, he  
10 admitted that he could see how someone could view it as an  
11 narcissistic PR stunt. If he knows that it's a reasonable  
12 statement --

13 **MR. SPIRO:** Objection as to "reasonable."

14 **THE COURT:** Well, I've told the jury the term  
15 "reasonable person" is being used, and I can't disrupt any  
16 choice of words of a lawyer. I have told the jury that  
17 "reasonable person" is part of the instruction regarding the  
18 effect on the listener of the July 15 tweet. Otherwise,  
19 the -- otherwise, counsel can use "reasonable person" as he  
20 wishes.

21 Proceed.

22 **MR. WOOD:** Thank you, Your Honor.

23 And then after -- here is the other question:  
24 How could you accuse someone of being a pedophile as an  
25 actual, factual, statement if you don't know anything about



10:44:22 1 them? That's a good question. I believe Mr. Spiro is going  
10:44:29 2 to argue that to you. That's not what the evidence has  
10:44:33 3 shown.

10:44:33 4 Elon Musk knew information about Vernon  
10:44:38 5 Unsworth because he had met him by seeing him on that  
10:44:42 6 television, three times he watched it, he saw Vernon Unsworth  
10:44:48 7 talking. He knew something about Vernon Unsworth.

10:44:52 8 But then before he -- and his lawyer said --  
10:44:55 9 JDART, before he joked, joking, he did something else, by his  
10:45:02 10 own admission. He went out and did research. He looked up  
10:45:07 11 Vernon Unsworth on Google to use as the basis for saying:

10:45:13 12 *He's an expat who lives in Thailand, paren, (SUS)*

10:45:26 13 "suspicious." And that he lived -- that the cave was near  
10:45:31 14 Chiang Rai where Mr. Musk says, he learned from Google, that  
10:45:36 15 it was known for the reputation of child sex trafficking.

10:45:43 16 When he made his -- what Mr. Spiro called him  
10:45:48 17 a JDART, a joke, which I would submit to you was an  
10:45:52 18 accusation of pedophile, he wasn't talking about a stranger,  
10:45:58 19 he was talking about a person he had seen three times on  
10:46:00 20 television talking, he was talking about somebody that he had  
10:46:04 21 researched to get information about, and then after he did  
10:46:07 22 that, did he tell a joke? Did he do an insult?

10:46:15 23 When was the last time a reasonable person  
10:46:18 24 would go out and study a person, research a person, in order  
10:46:27 25 to insult them? An insult is a spontaneous reaction, a

10:46:34 1 spontaneous response.

10:46:36 2 If you research it, by definition, it cannot  
10:46:41 3 be an insult. Insults are not researched. He researched.

10:46:49 4 So, when you look at the JDART --

10:46:58 5 (Discussion held off the record.)

10:46:58 6 So, when you look at the JDART --

10:47:14 7 **THE COURT:** What are you showing here?

10:47:20 8 **MR. WOOD:** The "JDART" definition.

10:47:22 9 **THE COURT:** I saw a transcript on the screen.

10:47:23 10 **MR. WOOD:** It's from the trial transcript --

10:47:25 11 **THE COURT:** The trial transcript can't be shown to  
10:47:27 12 the jury. It's not an official transcript.

10:47:30 13 **MR. WOOD:** I apologize, Your Honor. I think I can  
10:47:31 14 remember it from heart.

10:47:32 15 "JDART." "J" was for "joking"; "dart" was  
10:47:39 16 for "deletion"; "R" was for "responsive to a tweet."

10:47:45 17 Remember, Mr. Unsworth didn't tweet anything  
10:47:50 18 @elonmusk. He didn't even tweet his criticisms of the tube  
10:47:53 19 on Twitter.

10:47:55 20 And then I remember that "JDART" had an "A"  
10:47:58 21 in it for "apology." It had a "D" in it -- I'm sorry -- it  
10:48:02 22 had a "D" for the "deletion."

10:48:04 23 Let's talk about those very briefly before I  
10:48:08 24 try to conclude by talking to you about the damages this man  
10:48:13 25 has suffered, and the verdict that I believe speaks the truth

1 about what he is entitled to receive and the amount that Mr.  
2 Musk should face for punitive damages to discourage him from  
3 ever doing something like this again.

4 "J" -- I've covered it. You don't research a  
5 joke. "D," "deletion." Mr. Musk covered that for us in his  
6 testimony. While you can delete it from your Twitter thread,  
7 it's still out there in the Twitter world on the screen  
8 shots, and it has gone beyond, because it's Elon Musk's  
9 tweet, it has gone way beyond Twitter, because when Elon Musk  
10 tweets something, it goes around the world, and the  
11 mainstream media talks about it and repeats it.

12 You can't delete that. I'm sorry, it can  
13 never be deleted and never has been.

14 Did he apologize? He apologized right up  
15 there on the witness stand, referencing that he had  
16 apologized in the deposition, August of 2019 -- I'm sorry,  
17 18 -- 19. In his deposition of August 22nd of 2019, he  
18 apologized, he said that, and he came to court on December  
19 the 3rd -- seems like a month ago -- and he apologized again.  
20 He didn't have any choice. He had been sued. He was forced  
21 to apologize. He couldn't come into the deposition --

22 **MR. SPIRO:** Objection.

23 **THE COURT:** Overruled.

24 **MR. WOOD:** He couldn't come in and take that  
25 witness stand and look at everyone in the courtroom and go:

10:50:29 1 I'm not going to apologize. I have nothing to apologize for.

10:50:40 2 The apology is in the deposition, and in the  
10:50:43 3 court, I would suggest, can reasonably be viewed as a forced  
10:50:49 4 apology. And by definition, a forced apology is not a  
10:50:53 5 genuine apology.

10:50:55 6 So, let's look at the Twitter apology,  
10:50:58 7 because that's where he said he first apologized.

10:51:01 8 Would you put up that document please for me.  
10:51:07 9 Yeah, that's it. Thank you.

10:51:16 10 Here is the apology. And what has the  
10:51:19 11 evidence shown about that apology, on July the 17th? This is  
10:51:26 12 18th -- July 17th or 18th, that's the first time he said he  
10:51:31 13 genuinely apologized. When his advisors met and said you've  
10:51:39 14 got to apologize, and here is our suggestion on what you  
10:51:42 15 should say.

10:51:44 16 In evidence, you will see his response the  
10:51:46 17 next morning was: *I've slept on it, and I don't like the*  
10:51:50 18 *idea because it would look like I was trying to go out and*  
10:51:55 19 *say it at a time where it might be intentionally viewed by*  
10:51:57 20 *someone as being a disingenuous way to stop the drop in my*  
10:52:02 21 *stock prices or raise it back up.*

10:52:04 22 He apologized that first time and the only  
10:52:07 23 time on Twitter because of the pressures that his comments  
10:52:14 24 were causing on his business and the concerns other people  
10:52:19 25 had about his business. That's why he apologized the first

10:52:24 1 time. That's the one of the three. I've explained the other  
10:52:29 2 two.

10:52:35 3 Under the pressure from colleagues and the  
10:52:37 4 pressure on Tesla stock, on Twitter, I submit to you that  
10:52:46 5 under the evidence, it is justified to find that that was an  
10:52:49 6 apology of convenience. And just like a forced apology is  
10:52:57 7 not a genuine apology, an apology of convenience is not a  
10:53:02 8 genuine apology either.

10:53:04 9 And then he made it on a reply on Twitter.  
10:53:11 10 He didn't -- if it was genuine, he would have picked up the  
10:53:17 11 phone and called Vernon Unsworth, I submit. If it was  
10:53:21 12 genuine, he would have taken the time to write a direct -- to  
10:53:25 13 get someone on his large staff to find Mr. Unsworth's address  
10:53:27 14 to write him a direct letter saying: I'm sorry. I'm sorry  
10:53:31 15 for calling you a "pedo guy" which could be construed  
10:53:35 16 reasonably in the context of the tweet as an accusation of  
10:53:39 17 pedophilia. I'm sorry, Mr. Unsworth.

10:53:40 18 He didn't do that. He didn't even call, as  
10:53:43 19 he told you he could, he could have called a press conference  
10:53:44 20 with all the publicity being given to his accusation of "pedo  
10:53:49 21 guy" or "pedo" or "pedophile," he could have called an  
10:53:53 22 international press conference, and he could have looked over  
10:53:55 23 into the microphone in the scores of the world media, and he  
10:53:57 24 could have said: Mr. Unsworth, I am sorry for what I did. I  
10:54:00 25 apologize to you.

10:54:02 1 He could have even invited and arranged, if  
10:54:06 2 Mr. Unsworth had been asked and wanted to come, he could have  
10:54:10 3 gotten Vernon Unsworth to the press conference. He could  
10:54:12 4 have look over and said: Sir, to your face, I am sorry, and  
10:54:16 5 I apologize to you.

10:54:18 6 He didn't do any of that. So, strike the "A"  
10:54:19 7 out of JDART.

10:54:33 8 After seeing the interview --

10:54:36 9 And if you would put up Exhibit 19, please.

10:54:57 10 After seeing the interview, doing his  
10:54:59 11 research, he posted tweets, a thread, where he called him  
10:55:05 12 suspicious based on what he knew about him, and based on his  
10:55:10 13 research I assume -- based on what he found about some  
10:55:14 14 alleged reputation of Chiang Rai, don't know whether that's  
10:55:19 15 true or not, never been there. He intentionally, knowingly,  
10:55:30 16 for his own self purposes, knowing the damage it could  
10:55:37 17 conflict upon Vernon Unsworth, he dropped a bomb on this man.

10:55:42 18 And it was just not a bomb that would drop  
10:55:45 19 and the smoke would go away in a day or so. He dropped a  
10:55:50 20 nuclear bomb on Vernon Unsworth, a nuclear bomb, because a  
10:55:58 21 nuclear bomb would create immediate --

10:56:02 22 We've had too many tragedies of nuclear  
10:56:06 23 explosions in our lives, and we know that a nuclear bomb's  
10:56:09 24 immediate impact is going to be to either kill or horribly  
10:56:15 25 injure someone, immediate impact of the bomb.

10:56:18 1 But what do we know about a nuclear bomb?  
10:56:21 2 That well beyond the unfortunate people in the direct  
10:56:25 3 vicinity of the blast, there are people and relationships and  
10:56:34 4 situations that will be harmed for decades because of the  
10:56:44 5 fallout from that bomb.

10:56:52 6 And we know as reasonable folks, when the  
10:56:56 7 nuclear bomb goes off, we know the fallout exists. We can't  
10:57:04 8 reach out and touch it; we can't look out and see it, but we  
10:57:11 9 know that fallout is there. And we know that in years,  
10:57:20 10 decades or even another generation that that fallout will  
10:57:29 11 harm someone: Cancer, malformation, disease.

10:57:42 12 Nuclear fallout is going to hurt you. You  
10:57:45 13 don't know when, you don't know where, except you know it's  
10:57:49 14 going to be in the general vicinity of the fallout, and you  
10:57:54 15 don't know who. You don't know if it's going to affect your  
10:58:00 16 wife, who you loved, despite deciding to separate from, or  
10:58:07 17 whether it's going to impact your daughter, who for very  
10:58:11 18 personal reasons that are difficult for me, and I apologize  
10:58:14 19 for my emotions at times, but I will promise you -- I don't  
10:58:19 20 want to take that back. I'm going to ask you to tolerate my  
10:58:23 21 emotions sometimes. I'm not going to apologize for them,  
10:58:26 22 because they are sincere as they can be.

10:58:29 23 **THE COURT:** Well, here is the thing, Mr. Wood,  
10:58:32 24 lawyers are not wooden soldiers, and you're allowed as any  
10:58:36 25 lawyer to argue it vigor, but there are limits on

10:58:43 1 emotionality and how your emotionality affects the evidence.

10:58:48 2 So, be vigorous, but keep your emotions in  
10:58:55 3 check.

10:58:56 4 **MR. WOOD:** Thank you, Your Honor. And to the best  
10:58:58 5 of my professional and human abilities to keep my emotions in  
10:59:00 6 check --

10:59:00 7 **THE COURT:** As best you can.

10:59:03 8 **MR. WOOD:** -- I will do so.

10:59:06 9 **THE COURT:** Yes. Thank you.

10:59:06 10 **MR. WOOD:** I will do so.

10:59:14 11 So, you know that fallout is going to harm  
10:59:17 12 your wife, your daughter, maybe your grandchildren, a  
10:59:28 13 companion that you've gotten to know and love, who by some  
10:59:35 14 coincidence, and I don't believe in coincidences, lives near  
10:59:39 15 a cave system that you love, Tham Luang Cave.

10:59:49 16 What we also know about the fallout from the  
10:59:51 17 nuclear bomb, it is really hard to know where it's going to  
10:59:56 18 impact people, because a nuclear bomb sets out the radiation,  
11:00:00 19 and where does the radiation go? Wherever the wind takes it.  
11:00:11 20 Wherever the wind takes it.

11:00:17 21 Mr. Unsworth has told you about the emotional  
11:00:22 22 distress that he has in his life and the concerns he has in  
11:00:25 23 his life for his wife that he's still married to but has been  
11:00:31 24 separated from since 2007 or '8, and the feelings of concern  
11:00:36 25 that he has, not his wife's or his daughter's, the feelings



1 of concerns that he has about how that fallout will impact  
2 his daughter, even though he hasn't talked with her, for  
3 reasons that are private, in six years.

4 And he's got to worry about them, he's got to  
5 worry about every relationship in his life because the  
6 fallout is there for all of them. It has an impact on his  
7 friends, his business colleagues, the fellow members of the  
8 world that love caves. That fallout is going to be there to  
9 even impact relationships that hasn't even formed yet,  
10 friendships that he hasn't formed yet, but he hopes in his  
11 life he will, new people, maybe a new job. That fallout is  
12 going to impact that. He worries about it. Doesn't know  
13 when, he doesn't know how. He can't touch it, he can't see  
14 it, but he knows it's there. And that creates a tremendous  
15 amount of emotional distress. That's called actual damage.

16 May I take a moment to get a chart, Your  
17 Honor?

18 **THE COURT:** Please.

19 **MR. WOOD:** I made a mistake.

20 Would you pull up the diagram?

21 I've talked to you about Mr. Unsworth's  
22 actual damage from the blast. The Judge has instructed you  
23 on the assumed damage, which the law says that if this was  
24 defamation per se, if the accusation was so heinous as to be  
25 a per se defamation on its face, not that he may, but he is

1 entitled, he is entitled to recover an amount that you find  
2 in your enlightened consciousness as fair and impartial  
3 jurors for assumed damage.

4 The assumed damage is the fallout. The  
5 fallout to him, his emotional state and the fallout that will  
6 exist for the rest of his life to his reputation; and as much  
7 as it seems that the actual damage is great, the assumed  
8 damage from the fallout, I submit to you is even greater.

9 Now, who would plant, knowingly and  
10 intentionally plant a nuclear bomb that would kill and maim  
11 many on detonation and threaten others and damage others for  
12 generations to come? Who would do that? Who would plan it  
13 intentionally? Who would plant it for their own self-serving  
14 purposes, knowing that it would harm? What kind of person  
15 would do that? I don't think I know anybody like that.

16 But under the evidence, I submit and suggest  
17 to you that what we do know that in this particular incident,  
18 with this particular planning of the bomb, intentionally, for  
19 self-serving purposes, knowing it would harm others for  
20 decades to come, it was planted by Elon Musk, a  
21 multibillionaire. \$20 billion in net worth.

22 When I said I don't know the kind of  
23 mentality of a person who would plant that bomb, many  
24 reasonable people don't experience what is the mentality of  
25 someone with that much wealth and that much influence.

11:05:25 1 If you find from the evidence, which I think  
11:05:28 2 I've tried to simplify for you, because once you determine  
11:05:31 3 that Mr. Musk lied to you, if he lied to you about one thing,  
11:05:36 4 you can't trust him about anything else he says to you,  
11:05:38 5 because a liar is a liar is a liar. It's someone that you  
11:05:43 6 know, as a reasonable person, you know they have looked you  
11:05:45 7 in the face and they have lied to you, and you know it  
11:05:48 8 without any doubt in your mind, you know that that person has  
11:05:53 9 probably lied to you in the past, because a liar is a liar is  
11:05:56 10 a liar.

11:06:04 11 Four instances, under the evidence, did not  
11:06:26 12 tell you the truth when he testified under oath that "creepy  
11:06:31 13 old man" was quite common in the English speaking world. He  
11:06:42 14 told you under oath that it was quite common in the English  
11:06:48 15 speaking world that if you insulted somebody by saying:  
11:06:51 16 You're a pedo, you're a pedo guy, it's quite common in the  
11:06:56 17 English speaking world that you're simply saying: You're a  
11:07:01 18 creepy old man, suggesting that it is not common in the  
11:07:06 19 English speaking world that when you try to insult someone  
11:07:12 20 you say, by saying pedo guy or pedo, it's not common for  
11:07:16 21 everyone to react by knowing as a reasonable reader or  
11:07:22 22 listener that you are conveying that the person is a  
11:07:29 23 pedophile.

11:07:30 24 His testimony about the common use of "pedo  
11:07:36 25 guy" to mean "creepy old man" in the English speaking world

11:07:39 1 was a lie. I submit to you, under the evidence, that he lied  
11:07:55 2 to you when he told you he was sincerely apologizing to Mr.  
11:08:02 3 Unsworth.

11:08:02 4 And then when they defend -- when he defends  
11:08:09 5 the hiring of James Howard as an investigator on or about  
11:08:13 6 August the 15th, 2018, he told you that he did it because of  
11:08:20 7 anticipation of litigation. Well, it would be correct to  
11:08:27 8 anticipate from the day after you publish that tweet on July  
11:08:30 9 the 15th, you can get ready, you should anticipate  
11:08:34 10 litigation. Because if you falsely call someone a pedo guy,  
11:08:39 11 you can anticipate that that person is going to sue you.

11:08:43 12 But then the man that ran his investigation,  
11:08:47 13 James Birchall, also known as Jim Brickhouse, he told you the  
11:08:56 14 truth. This wasn't about litigation, that the instructions  
11:09:07 15 to leak negative and nasty information, without knowing  
11:09:13 16 whether it was true or false, but learning later that it was  
11:09:16 17 all false, to leak it to the UK was a public relations plan.  
11:09:23 18 He said it right there: *It was a public relations campaign.*  
11:09:28 19 To do what? To do what I guess that he didn't feel like he  
11:09:35 20 had done on July the 15th when he called him pedophile. He  
11:09:38 21 wanted to finish him off in the United Kingdom where he  
11:09:46 22 lives, where his wife lives, where his daughter lives.  
11:09:53 23 Malice. Common law malice. And he didn't tell you the truth  
11:10:01 24 about what he was doing or why he was doing it.

11:10:05 25 We talked about my August 6th letter, and

11:10:09 1 there is some testimony about when he saw it.

11:10:15 2 If you would put up, please, for me the  
11:10:24 3 deposition testimony that I presented to Mr. Musk and  
11:10:27 4 presented to him where he had said that he read the letter.  
11:10:32 5 Can you put it up? Excuse me. I have it here.

11:11:03 6 Okay, I don't want to -- I've taken up a lot  
11:11:06 7 of your time. I got a few more minutes, so let me just move  
11:11:06 8 through it.

11:11:10 9 He said on August 6, and I presented it to  
11:11:14 10 him, and I made an emphasis of it. He didn't just say that  
11:11:18 11 he knew about it. He said: *I knew it, and I had read it.*  
11:11:22 12 It's pretty much a quote: *I knew and read it.* Before he  
11:11:26 13 hired the investigator on August the 15th.

11:11:33 14 And here is why I don't hesitate to tell you,  
11:11:36 15 ladies and gentlemen, that was a lie, because he told you it  
11:11:41 16 was a lie.

11:11:42 17 Pull up Mr. Musk's tweet -- I'm sorry. Pull  
11:11:48 18 up that portion of the August 30th e-mail sent to Ryan Mac, a  
11:11:55 19 reporter from BuzzFeed. There it is.

11:12:02 20 As for this alleged threat of a lawsuit,  
11:12:06 21 which magically appeared when I raised the issue, when I  
11:12:12 22 raised the issue, nothing was sent or raised beforehand.  
11:12:13 23 Nothing was sent or raised beforehand: *"I fucking hope he*  
11:12:19 24 *sues me."*

11:12:20 25 Now there is a lie somewhere, either he read

11:12:24 1 it before August the 15th, or it magically appeared after he  
11:12:28 2 raised the issue a day or two before he sent this August 30th  
11:12:31 3 e-mail to Ryan Mac.

11:12:34 4 Would you put up the tweet please where Mr.  
11:12:38 5 Musk said: *"Don't you think it's strange he hasn't sued me?"*

11:12:49 6 There is when he first raised the issue,  
11:12:52 7 talking about, in a thread, about the fact that I had replied  
11:12:58 8 to that tweet in advocating for my client in a court of  
11:13:02 9 public opinion. I said: *"Ask Elon Musk to check his mail*  
11:13:09 10 *before he tweets."* And he had first raised the issue by  
11:13:12 11 about that August 28th or 29th tweet.

11:13:15 12 And that's what he's referring to on August  
11:13:17 13 the 30th when he said: *"It magically appeared after I raised*  
11:13:21 14 *the issue."*

11:13:22 15 He didn't tell you the truth. He lied to  
11:13:24 16 you. And you know it because of what he said in the e-mail  
11:13:27 17 to Ryan Mac. That's three or four lies, and there are  
11:13:39 18 others.

11:13:41 19 But on those three or four lies that I've  
11:13:44 20 just gone over with you, if I asked or reasonable person:  
11:13:49 21 Which one is the biggest lie of those? Out of those three or  
11:13:54 22 four, which one is the biggest lie? It's not in that list.  
11:13:59 23 You will not find the biggest lie of them all on that list,  
11:14:02 24 because the biggest lie of them all that Elon Musk told was  
11:14:06 25 when he told the world that Vernon Unsworth is a pedophile.

11:14:11 1 That was the biggest lie of them all.

11:14:27 2 When he said: *"You don't think it's strange*  
11:14:31 3 *he hasn't sued me? He was offered free legal services. And*  
11:14:36 4 *you call yourself @Yoda."*

11:14:42 5 That's when Elon Musk in that tweet conveyed  
11:14:46 6 to the world -- because it's not just Twitter, it goes beyond  
11:14:52 7 Twitter when he speaks on Twitter: *"Sue or true."* That's  
11:14:57 8 when the challenge was thrown down. That's when the bully,  
11:15:02 9 the billionaire bully, dared Mr. Unsworth, a man of modest  
11:15:09 10 means, when he dared him by saying: *If you do not sue, then*  
11:15:18 11 *it is true.*

11:15:23 12 And so this man traveled 5000 miles to get  
11:15:27 13 here, and when your verdict is delivered, he will travel back  
11:15:31 14 5000 miles to the UK. He traveled 10,000 miles to come into  
11:15:39 15 a court of law and accept a challenge to sue Elon Musk, a  
11:15:45 16 multibillionaire, with the financial resources to enlist a  
11:15:51 17 small army of lawyers. He took the day in the face of that  
11:15:58 18 type of known adversary, and he sued him. He sued him  
11:16:02 19 because it was not true then or now. This man is not a  
11:16:09 20 pedophile.

11:17:12 21 My obligation is to answer a few more  
11:17:15 22 questions for you under the evidence, and I will answer those  
11:17:23 23 questions without hesitation, without flinching, because I  
11:17:31 24 know what the evidence justifies in my mind. But I'm not the  
11:17:34 25 one that makes that decision.

11:17:35 1                   These decisions are not what Lin Wood tells  
11:17:40 2                   you. You, as fair and impartial jurors, in your enlightened  
11:17:45 3                   conscience, you have to fill in these blanks what you believe  
11:17:49 4                   is fair and just compensation for actual damage and assumed  
11:17:56 5                   damage, that's the compensatory damages to Mr. Unsworth, for  
11:18:00 6                   what happened to him and what he fears will happen in the  
11:18:03 7                   future, in fact, what he knows will happen in the future  
11:18:07 8                   because he knows the fallout will be there even though he  
11:18:10 9                   cannot see it and he cannot touch it.

11:18:12 10                  And only you have the right, which I respect,  
11:18:17 11                  to determine the amount of punitive damages that Elon Musk  
11:18:24 12                  must pay, as the Judge said to you, discourage him -- to  
11:18:36 13                  discourage him from ever doing this again to anybody.

11:18:43 14                  I don't have a formula. I don't have a  
11:18:49 15                  chart. No lawyer received training in law school on how to  
11:18:52 16                  calculate a dollar figure. That's why the law leaves it up  
11:18:57 17                  to you to use your enlightened conscience as a fair and  
11:19:00 18                  impartial juror to determine a fair compensation for injury  
11:19:06 19                  done.

11:19:08 20                  The actual damages from the blast that he has  
11:19:12 21                  proven to you by his testimony where he talked about being  
11:19:19 22                  ashamed, isolated, humiliated, feeling like he was sentenced  
11:19:26 23                  to a life -- he was sentenced to life in prison without  
11:19:29 24                  parole, the humiliation, and the damage that has occurred to  
11:19:39 25                  his reputation, actual damage to his reputation, I would



11:19:45 1 suggest, under the evidence, not the number you should find,  
11:19:51 2 but the number I believe is supported by the evidence, and I  
11:19:56 3 believe that number for this man's actual damage is very  
11:20:10 4 fairly determined at \$5 million.

11:20:15 5           You may find that it's, in your view, less;  
11:20:19 6 you may find in your view that it's more. That's your right.  
11:20:24 7 In fact, you're the only person that gets to make that  
11:20:27 8 decision. All you've got to do is look at the evidence and  
11:20:30 9 find out what you believe is justified fairly under the  
11:20:33 10 evidence to compensate this man for the blast of the damage,  
11:20:36 11 the actual damage that he's come into court and testified to  
11:20:41 12 you and has proven.

11:20:43 13           But then we've got to talk about assumed  
11:20:46 14 damages, which the law says could be as little as a dollar or  
11:20:50 15 as high as whatever you think it should be. And this is the  
11:20:54 16 damage not from the actual blast, this is the damage from the  
11:20:57 17 fallout. It's called assumed damages. And here it's  
11:21:02 18 appropriate because you assume it because you can't see it  
11:21:06 19 and you can't touch it but you know that it's there and will  
11:21:12 20 be there for the rest of his life and for the lives -- at  
11:21:19 21 least the life of his daughter and potentially his  
11:21:24 22 granddaughter or grandson.

11:21:27 23           I would submit to you, ladies and gentlemen  
11:21:28 24 of the jury, that it would be a reasonable verdict under this  
11:21:34 25 evidence for assumed damage for the fallout, the fallout, to

1 fill that blank with the sum of \$35 million.

2 And then we've got to look at punitive damage  
3 element because we've shown negligence, which is part of --

4 You get to consider the fact that he was  
5 negligent or grossly negligent as part of your determination  
6 of whether he acted with actual malice. This is --

7 The easy part is that -- if you say  
8 something, you do something intentionally, the negligence  
9 part makes you pay for the actual damages is easy. But here  
10 I have not hesitated to tell you this is a lie, and a lie is  
11 intentional, it is intentional, it is knowing, it is  
12 calculated, it is for your own purposes. That's the law of  
13 assumed damage. Punitive damage is to discourage him.

14 What in the world would it take to discourage  
15 Mr. Musk from ever planting a nuclear bomb in the life of  
16 another individual? I don't know. I know that the dollar  
17 amount is not by law designed to prevent it because if he's  
18 going to do it, no matter what you hit him with punitive  
19 damages, he's going to do it anyway.

20 You're not here to prevent him by your  
21 verdict. As the Judge told you, you're here just to  
22 discourage him, to make him think twice before he does it  
23 again, discourage him.

24 If you got \$20 billion, it would not be  
25 unreasonable in this evidence to say: You know what, I'd bet

11:23:51 1 he'd be discouraged if I hit him we a billion dollars in  
11:23:56 2 punitive damages, a billion dollars or more. Because he's  
11:23:58 3 still going to have 19 billion left over. That would  
11:24:01 4 discourage him from doing it again and losing another  
11:24:06 5 billion.

11:24:08 6           Someone else might say, look, we just want to  
11:24:10 7 discourage him by really getting his attention. And maybe we  
11:24:17 8 could get his attention for \$500 million in punitive damages.  
11:24:23 9 Others may say: You know what, I believe, reasonably, that  
11:24:28 10 what he needs is a hard slap on the wrist, and that might  
11:24:37 11 discourage himself.

11:24:51 12           \$150 million. I think that would be a hard  
11:24:57 13 slap on his wrist, that the best we can do as jurors to  
11:25:00 14 discourage him. Let's do that.

11:25:01 15           I would submit to you, with all due respect  
11:25:04 16 for your role as a juror and your right to determine that  
11:25:06 17 amount under the evidence in this case, and this man's wealth  
11:25:08 18 and this man's influence, that the punitive damages award  
11:25:12 19 should not reasonably be for less. But I can understand in  
11:25:22 20 the exercise of your right to make it more.

11:25:33 21           I ask you in my remarks to you to do your  
11:25:39 22 civic duty and to return a verdict that speaks the truth.  
11:25:47 23 And without hesitation, a verdict, as I have written on this  
11:25:53 24 board, will speak the truth. And not only will it speak the  
11:26:01 25 truth, it will be a shining example for others to follow.

11:26:08 1 Those conclude the initial opening remarks on  
11:26:10 2 behalf of the plaintiffs, Your Honor.

11:26:14 3 **THE COURT:** Members of the jury, it's important of  
11:26:16 4 course that you hear both lawyers. And as I said, the  
11:26:20 5 plaintiff goes first; the defendant follows. But it is now  
11:26:29 6 11 -- almost 11:30, 11:27 or so, and I'm going to ask you one  
11:26:44 7 of two things you can maybe think about it informally  
11:26:52 8 yourselves. I would like to take a short recess now and  
11:26:58 9 finish the arguments. Do you think that you could --

11:27:06 10 Paul --

11:27:07 11 COURT CLERK: Yes, Your Honor.

11:27:10 12 (Discussion off the record.)

11:27:28 13 **THE COURT:** What I'm thinking is, do you think  
11:27:30 14 that you could go down to the cafeteria, you know, on the  
11:27:39 15 first floor here, and just sort of grab some sustenance of  
11:27:46 16 some kind, just to carry you over? Not a full lunch, so that  
11:27:49 17 we can come back and, let's say, in 15, 20 minutes and then  
11:27:53 18 we can hear the defendant and then the plaintiff has an  
11:27:57 19 opportunity to make a brief rebuttal argument.

11:28:00 20 Rather than take a lunch hour, and -- I want  
11:28:04 21 you to hear all the arguments as -- together as we can.

11:28:10 22 Is that something that seems out of line, or  
11:28:13 23 can you do that?

11:28:18 24 Is that okay?

11:28:20 25 **THE JURY:** Yes.

11:28:21 1           **THE COURT:** Go downstairs -- don't talk about the  
11:28:23 2 case, of course -- and just grab, you know, a cup of coffee,  
11:28:30 3 a donut or a muffin or something, and then -- save your lunch  
11:28:34 4 for later -- and come back in, say, 15 or 20 minutes. Okay?  
11:28:41 5 Thank you.

11:28:41 6           (Following proceedings were held outside the  
11:29:16 7 presence of the jury.)

11:29:16 8           **THE COURT:** We'll have the defendant's arguments,  
11:29:18 9 at about 15, 20.

11:29:20 10           I just want to say, Mr. Wood, I didn't  
11:29:23 11 disrupt your argument other than the few interjections, but  
11:29:26 12 you sort of -- and I'm not accusing you of deception here --  
11:29:30 13 but you mislead me, because you said initially you'll be 15  
11:29:35 14 minutes opening, then you modified it to a half hour after I  
11:29:40 15 gave you the format, and I timed it, and you wound up going  
11:29:44 16 an hour and a half.

11:29:46 17           So, I'm not faulting you. I'm just saying  
11:29:50 18 you disrupted what the planned schedule was, and that's why I  
11:29:53 19 had to make the suggestion to the jury as I did.

11:29:59 20           In light of the unexpected length of the  
11:30:04 21 plaintiff's argument, any estimate as to how long the --

11:30:10 22           It isn't tit-for-tat, but I'm just wondering  
11:30:14 23 what the --

11:30:15 24           **MR. SPIRO:** About 45. I could see it bleeding  
11:30:19 25 into closer to an hour.

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11:30:26 2  
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**THE COURT:** No, no effort here. I'm just trying  
to get a guess.

Okay, back in about 15-20 minutes.

(Recess taken.)

(Reporters switched).

~ ~ ~

## C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript of the stenographically recorded proceedings in the above matter.

Fees charged for this transcript, less any circuit fee reduction and/or deposit, are in conformance with the regulations of the judicial conference of the united states.

/S/Anne Kielwasser

\_\_\_\_\_  
Anne Kielwasser, CSR, RPR  
Official Court Reporter

12/6/2019  
Date

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